

**Upper Clark Fork River Basin Steering Committee**  
**Meeting Summary**  
**January 9, 2008**

**Introductions**

Gerald Mueller and members of the Upper Clark Fork River Basin Steering Committee (Steering Committee) introduced themselves. Those in attendance included:

**Members**

Jules Waber  
Jim Struma  
Dwight Crawford  
Jim Dinsmore  
Mike McLane  
Bob Benson  
Stan Bradshaw  
Robin Bullock  
Rep. Jon Sesso

**Group/Organization Represented**

Powell County  
Granite County  
Deer Lodge County Conservation District  
Granite Conservation District  
Montana Department of Fish, Wildlife and Parks (DFWP)  
Clark Fork Coalition  
Trout Unlimited  
Atlantic Richfield (ARCO)  
Butte-Silver Bow

**Public**

Chuck Stokke  
Jan Christensen

Georgetown Lake Homeowners Association (GLHA)  
GLHA

**Agency Personnel**

Jason Lindstrom  
Brad Lierman  
Bill Schultz  
  
Ethan Mace

DFWP  
DFWP  
Montana Department of Natural Resources and Conservation  
(DNRC) - Missoula  
DNRC - Missoula

**Staff**

Curt Martin  
Gerald Mueller

DNRC Water Management Bureau  
Facilitator

**Agenda**

- Review summary of the October 31, 2007 Meeting
- Updates
  - Water Policy Interim Committee Activities
  - Milltown Dam Water Rights Paper
  - DNRC Rules
  - Granite County Water Right Change Application Decision
  - Clark Fork River Consent Decree
- Proposed Steering Committee Projects
- Public Comment
- Next Meeting

**October 31, 2007 Meeting Summary**

The Steering Committee made no changes to the meeting summary.

## **Updates**

Water Policy Interim Committee (WPIC) Activities - Gerald Mueller reported that on January 4, 2008, WPIC staff posted drafts of eight bills on the committee web site. He passed out a memorandum included below as Appendix 1 which briefly summarizing the bill drafts. He noted that WPIC will discuss the bill drafts for the first time at its meeting in Hamilton on January 15-16. WPIC staff has changed. Christa Lee Evans has taken a job outside of state government, and she has been replaced by Joe Kolman.

***Steering Committee Action - Because it has not had time to digest the bill drafts, the Steering Committee took no action regarding them. It will consider taking positions on the drafts at its next meeting.***

Milltown Dam Water Rights Paper - Gerald Mueller reported that he mailed copies of the paper to the basin's legislative delegation, conservation districts, and the counties. He also emailed a copy to a *Missoulian* reporter. A copy is posted on the Steering Committee web page at [http://dnrc.mt.gov/wrd/water\\_mgmt/clarkfork\\_steeringcomm/pdfs/milltown\\_dam\\_paper.pdf](http://dnrc.mt.gov/wrd/water_mgmt/clarkfork_steeringcomm/pdfs/milltown_dam_paper.pdf). Mr. Mueller also presented the paper at the December 16, 2007 meeting of the Granite Headwaters Watershed Group. Mr. Mueller has copies of the paper, should anyone wish some.

DNRC Rules - Curt Martin summarized DNRC's proposed rules regarding application forms and fees. See Appendix 2. DNRC is proposing fee increases so it can cover more of the cost of processing the applications. The rules also propose eliminating Form 627 titled "Notice of Water Right (Exempt From the Adjudication Filing Requirements)" on which the owners of exempt instream stock water rights and domestic uses from instream or groundwater sources in use prior to July 1, 1973 provided notice of their right. These rights did not have to be filed for the adjudication. This form allowed owners to make a public record of their right. The form did not, however, confer any status on the rights.

Granite County Water Right Change Application Decision - Bill Schultz discussed the Proposal For Decision issued by a DNRC hearing officer on December 27, 2007 on Granite County's application for a change to its Georgetown Lake water rights. The order is available online at [http://dnrc.mt.gov/wrd/water\\_rts/hearing\\_info/significant\\_hearingdecisions/granite\\_cty\\_pfd.pdf](http://dnrc.mt.gov/wrd/water_rts/hearing_info/significant_hearingdecisions/granite_cty_pfd.pdf). The proposed decision has two key findings. One is that the applicant did prove that the change would not adversely affect existing rights because the rights would be managed in accord with historic practice, and the management would be subject to the call of downstream appropriators according to priority. The other is that the applicant did not prove that "...the quantity of water proposed to be used is the amount necessary for the proposed beneficial uses and the amount of water requested for the added purposes is not a waste of water." Based on the latter finding, the application was proposed to be denied. The applicant and other parties now have the opportunity to file exceptions to the proposed decision. If exceptions are filed, the Proposal For Decision will be re-considered by a different hearing officer. (Oral arguments are an option) Granite County filed an exception to the Proposal For Decision on January 16, 2008. The Georgetown Lake Homowners

filed a Notice of Joinder on January 17, 2008. A Final Decision on the application will then be issued by DNRC. The Final Decision can then be appealed to district court.

*Question - If it is confirmed, would this decision create a precedent regarding storage water rights?*

Answer - No. The requirement leading to the proposed denial is not new. The amount of water necessary for a beneficial use must be quantified.

*Question - Question – The Proposal For Decision states that the applicant did not adequately quantify the amount of water necessary to support the proposed new uses for recreation and the lake fishery. Are there tools available to make such a quantification*

Answer - Yes, there are tools by which the amount of water necessary for recreation and fishery use could be determined.

*Comment from Jim Dinsmore - At least one aspect of the application appears to be precedent setting. Management of Georgetown Lake has not previously been subject to water rights calls by lower basin water right holders. In its application, as noted in the proposed decision, the County stated that lake management is subject to the call of downstream appropriators according to priority. This is the first written acknowledgment I am aware of that would allow water users under both the Schuh and Featherman decrees to make call on the release of Georgetown Lake water.*

*Question - Could the County amend its application and provide the information about the amount of water necessary for the recreational and fishery beneficial uses, or would it have to file a new application?*

Answer - No, the record is closed on the current application. A new application would be necessary.

*Question - Does the proposed decision call into question storing water if hydropower is not reinstalled at the dam?*

Answer - Under the current water rights, the only beneficial use connected to water storage in the lake is hydropower.

*Question - Why didn't DNRC allow irrigation as the reason for storage in the lake?*

Answer - The application did not request irrigation as an added beneficial use. The only existing water right is for a non-consumptive use, hydropower generation. Irrigation would be a consumptive use. The only change that will likely be allowed would be another non-consumptive use.

Clark Fork River Consent Decree - Robin Bullock reported that ARCO has signed the consent decree for the river, but it has not yet been signed all governmental parties, i.e, the United States Departments of Justice and Interior, the Environmental Protection Agency, and the Montana Departments of Environmental Quality and Justice. After the decree is signed by all parties and filed with the court, a 60-day period will be allowed for the public to comment on it before the court takes final action. Work remains on the Clark Fork River, Anaconda and Butte restoration plans. The next consent decree will address Warm Springs and Mill Creeks.

***Steering Committee Action - After a discussion, the Steering Committee agreed that it should consider a goal or road map for the Clark Fork River remediation activities to be funded by the NRD Clark Fork River settlement funds.***

### **Proposed Steering Committee Projects**

Using his December 16, 2007 memorandum, which had been previously supplied to the Steering Committee, Gerald Mueller asked that two potential projects be added to the Steering Committee work plan. See Appendix 3 for the December 16 memorandum.

***Steering Committee Action - The Steering Committee agreed to add both projects to its work plan. Mr. Mueller will, therefore, prepare an application to the NRD Program for a grant to conduct study of the state of the Georgetown Lake by the March deadline. Also, the Steering Committee requested that DNRC issue a contract to Dennis Workman to develop a grant proposal to NRD in the under \$25,000 category for a project to examine reconnecting the Clark Fork River mainstem with its old channel and/or its tributaries in the reach from Drummond to Missoula. The contract with Mr. Workman should be for no more than \$3000.***

### **Public Comment**

There was no additional public comment.

### **Next Meeting**

The next meeting is scheduled for Wednesday, February 13, 2008 in Deer Lodge. The agenda will include discussion of the WPIC bill drafts, the Clark Fork River reconnection application, and, if it is released, the Clark Fork River settlement agreement and the associated state restoration plan for the River.

**Appendix 1**  
**Upper Clark Fork River Basin Steering Committee**  
**C/O Gerald Mueller**  
**440 Evans**  
**Missoula, MT 59801**  
**(406)543-0026**

**MEMORANDUM**

**Date:** January 8, 2008  
**To:** Upper Clark Fork River Basin Steering Committee  
**From:** Gerald Mueller  
**RE:** Water Policy Interim Committee Draft Bills

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Staff of the Water Policy Interim Committee (WPIC) have drafted the following bills:

- LC5001 - This bill provides for an accelerated permitting process by allowing an applicant for an appropriation right in a basin closed to new appropriations to avoid submitting a hydrogeologic assessment if the applicant submits a mitigation plan or an aquifer recharge plan that provides for the offset of at least 100 percent of the amount of groundwater withdrawn by the proposed appropriation, regardless of the amount of net depletion to surface water or adverse affect.
- LC5002 - This bill allows a person to issue a notice of intent to drill well for which a water permit is required, provides that if no objections are received, then the department may issue a provisional permit.
- LC5003 - This bill creates a new division of water rights enforcement within DNRC headed by a state engineer. It charges the new division with the responsibility for the administrative enforcement of water rights and for administratively preventing the unauthorized use of water. The division would also employ water commissioners. The new division would be assigned enforcement responsibilities now exercised by the courts.
- LC5004 - This bill revises the laws relating to water quality for subdivisions by clarifying the authority of local governments to require community water supply systems and public sewer and waste water systems for subdivisions, authorizing state and local governments to give priority in the review process to subdivision applications that provide for community water supply systems and public sewer and waste water systems.
- LC5005 - This bill was requested by the Montana Department of Transportation. It provides for the issuance of state water reservations for aquatic resource activities carried out in compliance with and as required by the federal clean water act of 1977 in all closed basins for surface water and ground water, provides that the water reservations may not be used for dilution and are not subject to a change of use, and exempts applicants for state water reservations for aquatic resource activities from the requirement of preparing a hydrological assessment or providing a mitigation plan.
- LC5006 - This bill eliminates the disconnect between subdivision and water right permitting by final plat by requiring that approval for a subdivision may not be granted unless the applicant submits evidence that a permit to appropriate water has been obtained.
- LC5007 - This bill provides that the Montana bureau of mines and geology shall develop and implement a ground water investigation program for the purpose of collecting and compiling

ground water and aquifer data. The program shall gather data, compile existing information, conduct field studies, and prepare a detailed hydrogeologic assessment report for each subbasin. The program shall develop a monitoring plan for each subbasin for which a report is prepared. The program is funded by an additional fee on each water permit application, each subdivision application, or on each wellog. The combination of funding needs to raise about \$1.2 million for the biennium in order for the bureau to complete 2 subbasins each biennium.

- LC5008 - This bill provides that: the chief water judge shall resolve all issue remarks on claims that have received an objection, whether each issue remark is subject to an objection or not; prior to an enforcement action pursuant to 85-2-406, the chief water judge shall resolve all issue remarks related to flow rate or volume; and a temporary preliminary decree or preliminary decree or a portion of a temporary preliminary decree or preliminary decree may be enforced prior to final resolution of all issue remarks in certain instances.

**Appendix 2**  
BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

In the matter of the proposed amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 36.12.102, forms and ARM 36.12.103,	)	PROPOSED AMENDMENT
form and special fees	)	
	)	

To: All Concerned Persons

1. On January 17, 2008, at 1:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), at the Department of Natural Resources and Conservation, Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on January 2, 2008, to advise us of the nature of the accommodation that you need. Please contact Kim Overcast, Montana Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620, (406) 444-6614, fax (406) 444-0533, e-mail kovercast@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

36.12.102 FORMS (1) The following necessary forms for implementation of the act and these rules are available from the Department of Natural Resources and Conservation, P.O. Box 201601, Helena, Montana 59620-1601 and its Water Resources regional offices, or on the World Wide Web at <http://dnrc.mt.gov/wrd/default.asp>. The department may revise as necessary the following forms to improve the administration of these rules and the applicable water laws:

(a) Form No. 600, "Application for Beneficial Water Use Permit" (for groundwater developments in excess of 35 gpm or ten acre-feet per year and surface water appropriations); :

~~(i) Submission of this application must include a criteria addendum. See Form Nos. 600A or 600B.~~

(i) Form No. 600A, "Criteria Addendum, Application for Beneficial Water Use Permit," information must be submitted for appropriations of less than 4000 acre-feet and 5.5 cfs; or

(ii) Form No. 600B, "Criteria Addendum, Application for Beneficial Water Use Permit," information must be submitted for appropriations of 4000 acre-feet or more and 5.5 cfs or more.

~~(b) Form No. 600A "Criteria Addendum, Application for Beneficial Water Use Permit" (for appropriations of less than 4000 acre-feet and 5.5 cfs);~~

~~(c) Form No. 600B "Criteria Addendum, Application for Beneficial Water Use Permit" (for appropriations of 4000 acre-feet or more and 5.5 cfs or more);~~

~~(d)~~ (b) Form No. 602, "Notice of Completion of Groundwater Development" (for groundwater developments with a maximum use of 35 gpm or less, not to exceed 40 ~~ten~~ acre-feet per year);

~~(e)~~ (c) Form No. 603, "Well Log Report";

~~(f)~~ (d) Form No. 605, "Application for Provisional Permit for Completed Stockwater Pit or Reservoir" (maximum capacity of the pit or reservoir must be less than 15 acre-feet);

~~(g)~~ (e) Form No. 606, "Application to Change a Water Right"; ;

(i) submission of this application must include information required by the following a criteria addendum, addenda, when applicable: See Form Nos. 606A, 606B, 606ASW, or 606T;

~~(h) Form No. 606A "Supplement to Application to Change a Water Right" (for any change in point of diversion or place of storage and for changes in purpose of use or place of use of less than 4000 acre-feet and 5.5 cfs);~~

~~(i)~~ (A) Form No. 606B, "Supplement to Application to Change a Water Right" (for changes in purpose of use or place of use of 4000 or more acre-feet a year and 5.5 cfs or more);

~~(j)~~ (B) Form No. 606ASW, "Supplement to Application to Change a Water Right" (for salvage water); or

~~(k)~~ (C) Form No. 606T, "Temporary Change Supplement to Application to Change a Water Right"; ;

~~(l)~~ (f) Form No. 607, "Application for Extension of Time";

~~(m)~~ (g) Form No. 608, "Water Right Ownership Update"; ;

~~(n)~~ (i) Form No. 608A, "Addendum to Water Right Ownership Update Form for Apportioned Water Right"; ;

~~(o)~~ (h) Form No. 611, "Objection to Application";

~~(p) Form No. 612 "Notice and Statement of Opinion";~~

~~(q)~~ (j) Form No. 613, "Fee Schedule for Water Use in Montana";

~~(r)~~ (i) Form No. 615, "Water Conversion Table";

~~(s)~~ (k) Form No. 617, "Project Completion Notice for Permitted Water Development";

~~(t)~~ (l) Form No. 618, "Project Completion Notice for Change of a Water Right";

~~(u)~~ (m) Form No. 625, "Water Right Correction";

~~(v)~~ (n) Form No. 626, "Application to Renew a Temporary Water Right Change";

~~(w) Form No. 627 "Notice of Exempt Water Right" (exempt from the adjudication filing requirements);~~

~~(x)~~ (o) Form No. 630, "Controlled Groundwater Area Petition";

~~(y)~~ (p) Form No. 631, "Petition for Closure of a Highly Appropriated Basin";

~~(z)~~ (q) Form No. 634, "Replacement Well Notice" (for municipal wells that do not exceed 450 gpm or for all other wells that do not exceed 35 gpm and ten acre-feet per year); and

~~(aa)~~ (r) Form No. 635, "Redundant Well Construction Notice" (for redundant wells in a public water supply system as defined by 75-6-102, MCA); ;

(s) Form No. 636, "Interim Permit Request";

(t) Form No. 637, "Reinstatement Request" (for reinstating a permit or change authorization);  
and

(u) Form No. 638, "Water Reservation Application for Instream Flow" (for instream flow water reservation applications allowed under the United States of America, Department of Agriculture, Forest Service-Montana Compact, Article VI, section B).

AUTH: 85-2-113, MCA

IMP: 85-2-113, MCA

REASONABLE NECESSITY: The amendments to the forms rule clarify that information addressing the



form requirements must be submitted, not just the form itself. The proposed amendments also eliminate forms no longer used by the department and add new forms (636, 637, and 638) to be used for water right processing. Form numbers 636 and 637 are necessary in order for the department to ensure that the department obtains the necessary information from applicants or petitioners that is needed for water right processing. Form number 638 is needed to comply with the United States of America, Department of Agriculture, Forest Service-Montana Compact, 85-20-1401, MCA.

36.12.103 FORM AND SPECIAL FEES (1) A filing fee, if required, shall be paid at the time the permit, change, notice of completion, extension of time request, temporary change renewal, ownership update, ~~exempt water right~~, or petition application (hereafter singularly or collectively referred to as application) is filed with the department. The department will not process any application without the proper filing fee. Failure to submit the proper filing fee within 30 days after notice shall result in a determination that the application is not correct and complete in good faith, ~~does not show a bona fide intent~~, and it shall be terminated. ~~An application fee is a one-time filing and processing fee paid at the time of application.~~

(a) For an Application for Beneficial Water Use Permit, Form No. 600, filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, or in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, or a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, or filed under a compact pursuant to Title 85, chapter 20, MCA, for all surface water, or a groundwater appropriation of greater than 35 gallons per minute, there shall be a fee of ~~\$800.~~ \$400, ~~except for a groundwater well application with an appropriation of 35 gpm or less, not to exceed ten acre-feet, filed pursuant to the United States National Park Service-Montana Compact, Article II, section B.2.ii(3)(b) or Article IV, section G.2.b.i.(1), or located within the boundaries of a temporary controlled groundwater area, the fee shall be \$200.~~

(b) For an Application for Beneficial Water Use Permit, Form No. 600, filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, or in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, or a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, or filed under a compact pursuant to Title 85, chapter 20, MCA, for a groundwater appropriation of 35 gallons per minute or less, there shall be a fee of \$200.

(c) For an Application for Beneficial Water Use Permit, Form No. 600, not filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, nor in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, nor a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, nor filed under a compact pursuant to Title 85, chapter 20, MCA, for all surface water, or a groundwater appropriation of greater than 35 gallons per minute there shall be a fee of \$600.

~~(b)~~ (d) For an Interim Permit Request, Form No. 636, there shall be a fee of ~~\$50~~ \$150 in addition to (1)(a), (b), or (c).

~~(e)~~ (e) For a Notice of Completion of Groundwater Development (for groundwater developments with a maximum use of 35 gpm or less, not to exceed ten acre-feet per year), Form No. 602, there shall be a fee of ~~\$50~~ \$125.

~~(d)~~ (f) For an Application for Provisional Permit for Completed Stockwater Pit or Reservoir (maximum capacity of the pit or reservoir must be less than 15 acre-feet), Form No. 605, there shall be a fee of ~~\$50~~ \$125.

~~(e)~~ (g) For an Application to Change a Water Right, Form No. 606, there shall be a fee of ~~\$400~~ \$700, except there shall be a fee of \$200 when:

(i) the change application, Form No. 606, concerns a replacement well, greater than 35 gpm or ten acre-feet, or a municipal well that does not exceed 450 gpm, or replacement reservoir located on ~~in~~ the same source; or

(ii) the change application, Form No. 606, concerns only moving or adding stock tanks to an existing system.

~~(iii) There shall be a fee of \$100.~~

~~(f)~~ (h) For an Application for Extension of Time, Form No. 607, there shall be a fee of ~~\$100~~ \$200.

~~(g)~~ (i) For a Water Right Ownership Update, Form No. 608, there shall be a fee of \$50, plus \$10 for each water right transferred after the first water right, not to exceed a maximum of \$300.

~~(h)~~ (j) For filing an Objection to Application, Form No. 611, there shall be a fee of \$25.

~~(i)~~ (k) For an Application to Renew a Temporary Water Right Change, Form No. 626, there shall be a fee of ~~\$100~~ \$200.

~~(j)~~ For a Notice of Exempt Water Right, Form No. 627, there shall be a fee of \$50.

~~(k)~~ (l) For a Controlled Groundwater Area Petition, Form No. 630, there shall be a fee of ~~\$500~~ \$1500 for filing this petition form, plus the petitioner shall also pay: ~~reasonable costs of giving notice including the newspaper and individual notice costs, printing and mailing costs, holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel.~~

(i) photocopy and postage costs for copying and mailing the appointment of the hearing examiner, notice of hearing, and petition to all land owners and water right owners located within the proposed boundaries, and other persons as required by 85-2-506, MCA;

(ii) photocopy and postage costs for copying and mailing the hearing examiner's proposal for decision, final order, and other orders as needed;

(iii) newspaper publication of the notice of hearing and orders as required by statute and the hearing examiner;

(iv) actual rental costs for the hearing location and required sound equipment as determined by the hearing examiner; and

(v) other costs of holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel.

~~(l)~~ (m) For a Petition for Closure of a Highly Appropriated Basin, Form No. 631, there shall be a fee of ~~\$500~~ \$1500 for filing this petition form, plus the petitioner shall also pay: ~~reasonable costs of giving notice including the newspaper and individual notice costs, printing and mailing costs, holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-319, MCA, except the cost of salaries of the department personnel.~~

(i) publication costs of the proposed rules in the Montana Administrative Register;

(ii) photocopy and postage costs for copying and mailing the Administrative Rule Proposal Notice and appointment of the hearing examiner to all land owners and water right owners located within the proposed boundaries and other persons as required by 85-2-319, MCA;

(iii) photocopy and postage costs for copying and mailing the Notice of Adoption and other documents as needed;

(iv) newspaper publication of the Notice of Rulemaking Hearing;

(v) actual rental costs for the hearing location and required sound equipment as determined by the hearing examiner; and

(vi) other costs of holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-319, MCA, except the cost of salaries of the department personnel.

~~(m) For reinstating a permit or change authorization, there shall be a fee of \$25.~~

~~(n) For a Replacement Well Notice, Form No. 634, there shall be a fee of \$50-\$100.~~

~~(o) For a Redundant Well Construction Notice, Form No. 635, there shall be a fee of \$50.~~

(p) For a Reinstatement Request, Form No. 637, there shall be a fee of \$200.

(q) For a Water Reservation Application for Instream Flow, Form No. 638, there shall be a fee of \$800, plus the applicant shall also pay:

(i) photocopy and postage costs for copying and mailing the appointment of the hearing examiner and notice of hearing;

(ii) photocopy and postage costs for copying and mailing the hearing examiner's proposal for decision, final order, and other orders as needed;

(iii) newspaper publication of the notice of hearing and orders as required by statute and the hearing examiner;

(iv) actual rental costs for the hearing location and required sound equipment as determined by the hearing examiner; and

(v) other costs of holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel.

(2) and (3) remain the same.

AUTH: 85-2-113, MCA

IMP: 85-2-113, 85-2-312, MCA

REASONABLE NECESSITY: Pursuant to 85-2-113, MCA, the department may prescribe fees for public service provided under the Montana Water Use Act. The department evaluated water right application processing costs and revenues generated and determined that fee increases are necessary. The proposed fee increases are expected to raise revenues to \$1,007,400 each year and will affect approximately 12,578 people. Some fee language has been changed to clearly denote the fees an applicant or petitioner are required to pay. Finally, the required fees for the new forms were identified.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Kim Overcast, Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-5918; or e-mail kovercast@mt.gov, and must be postmarked no later than January 17, 2008.

5. Kim Overcast, Department of Natural Resources and Conservation, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing on Proposed Amendment is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in (4) above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton  
MARY SEXTON

/s/ Anne Yates  
ANNE YATES

**Director      Rule Reviewer**

Natural Resources and Conservation

Certified to the Secretary of State on December 10, 2007.

**Appendix 3**  
**Upper Clark Fork River Basin Steering Committee**  
**C/O Gerald Mueller**  
**440 Evans**  
**Missoula, MT 59801**  
**(406)543-0026**

**MEMORANDUM**

**Date:** December 16, 2007  
**To:** Steering Committee Members  
**From:** Gerald Mueller  
**RE:** Possible Steering Committee Projects

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I see possible two projects for the Steering Committee, a study of the state of Georgetown Lake and reconnecting the mainstem of the Clark Fork River to its old channel. The first is new and the second was considered two years ago. We will discuss both projects at the January 9 Steering Committee meeting. The purpose of this memo is to provide background for the discussion.

**State of Georgetown Lake**

Development of a plan to conduct a study of the state of Georgetown Lake will shortly be underway by Dr. Lisa Eby, an Assistant Professor in the Department of Conservation and Ecosystem Sciences and Wildlife Biology Program of the University of Montana College of Forestry and Conservation. Dr. Eby's work is being funded by a planning grant from the Natural Resources Damage (NRD) Program. The application for this grant was sponsored by Granite Conservation District (GCD), Granite Headwaters Watershed Group (GHWG), and the Georgetown Lake Homeowners Association (GLHA). As envisioned in the application, the plan will result in a study with three objectives: describing the current State of Georgetown Lake, assessing whether that state has changed over time, and developing a citizen monitoring plan. The final product of this grant is intended to be used as the basis for seeking funding from the NRD Program, the Department of Environmental Quality 319 Program, and/or other sources to implement the study.

I am asking the Steering Committee to take on the study of the state of Georgetown Lake as a project because the three planning grant applicants lack funding to produce the application to seek implementation of the study plan. Should the Steering Committee agree to become a partner with GCD, GHWG, and GLHA, I can write the application(s) to implement the study plan as a part of my Steering Committee responsibilities. No additional funding would be required to do so. The Steering Committee would then become a partner with the other three organizations in implementing the plan.

**Clark Fork River Reconnection Project**

In November 2005, the Steering Committee considered a project to conduct a reconnaissance level study to identify promising sites for reconnecting the Clark Fork River to its former channel in the Garrison to Rock Creek reach. At the time, staff of the NRD Program recommended that pursuit of this project be postponed pending settlement of the mainstem

portion of the Natural Resources Damage litigation. Because settlement is imminent, NRD staff has indicated that submitting a grant application would be appropriate in March 2008.

Two years ago, I discussed such an application with two University of Montana Geology Professors, Dr. Johnny Moore and Dr. Bill Woessner and separately with Paul Callahan of Land and Water Resources. All were interested. Dr. Moore and Dr. Woessner said that this project could be appropriate for a graduate student, and tentatively suggested a budget of \$35,000. I have appended to this memo the October 31, 2005 preliminary draft of a summary of a reconnection project.

This time, I am proposing a different approach. I suggest that the Steering Committee recommend that the Department of Natural Resources and Conservation (DNRC) use Steering Committee funds to contract with Dennis Workman to prepare a grant application to the NRD Program, with my assistance. As you are probably aware, Mr. Workman retired from the position of the Department of Fish, Wildlife and Parks (DFWP) Fisheries Manager for Region 2. He was also a member of the Steering Committee representing DFWP for several years. Mr. Workman conducted work on dewatered streams on behalf of the Steering Committee as a contractor to GCD.

The last legislature appropriated \$20,000 per year for the 2008-09 biennium to DNRC to fund the Steering Committee. DNRC has contracted to pay me \$15,000 per year for my salary and expenses. The budget we proposed to the legislature included \$3,000 per year for Steering Committee member mileage and lunches and \$2,000 per year for publications. We have not spent the publication money and have not spent all of the \$3,000 for fiscal year 2008. Therefore funding to pay Mr. Workman to produce the application should be available.

I propose further that Mr. Workman act as the manager of the study should NRD approve the application. I have discussed this possibility with Mr. Workman and he has agreed to work with us and DNRC. He proposed that in addition to attempting to reconnect the river with its former channel, we also consider reconnecting tributaries that have been cut off from the mainstem in the Garrison to Rock Creek reach. He also proposed that we issue a request for proposals describing the work we want done so that interested parties could bid on conducting it.

In order to make the mid-March deadline for applications to the NRD program, we should make a decision on this project and Mr. Workman's potential role in it at the January 9 meeting.

## **Preliminary Discussion Draft of October 31, 2005**

### **Clark Fork River Reconnection Project Summary**

The Upper Clark Fork River Basin Steering Committee in partnership with the Granite Conservation District seeks a Project Development Grant of \$XX,XXX to conduct a reconnaissance level study to identify promising sites for reconnecting the Clark Fork River to its former channel in the Garrison to Rock Creek reach. At various times over the last hundred years, development of transportation corridors forced the confinement of the river to narrow channels cutting off meanders and significantly reducing river length. This confinement to straight stretches isolates the river from its flood plain, increases flow velocity, disrupts surface and ground water exchanges, increases water temperature, and increases bank erosion and sediment loading. These impacts, in turn, adversely affect the aquatic ecosystem including the fishery. By breaching embankments or installing culverts or bridges, the river may be reconnected to its former bed reversing these impacts.

A map of the project area is attached. A preliminary review of aerial photo graphs of the river corridor indicates at least XX instances in which railroad lines, county roads, and/or Interstate 90 have cut off river meanders. This study would categorize each opportunity for reconnection using the following factors:

- Land ownership
- Type and number of reconnection actions required, i.e. breaching embankments, installing culverts, or building bridges
- River and former meander elevations
- Length of river reconnection would add
- Metals contamination

The \$XX,XXX would be used to hire a contractor to determine land ownership, measure river and former channel elevations, measure river length gains using aerial photography, measure total copper concentrations in cut off sections, determine what type of structures would be required to make the reconnections. The study would be conducted over a two month period in late summer or early fall when river flows are normally reduced.